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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JERRY ALTEN, BRUCE DAVIS,  
MICHAEL MORRIS, and ROGER YOUNAN

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Appeal 2009-012900  
Application 09/410,853  
Technology Center 2400

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Before JOSEPH F. RUGGIERO, MARC S. HOFF, and  
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1, 2, 4-7, 13-15, 17-20, 26-28, 30-33, 39-45, 47, and 52-59, which are all of the pending claims. Claims 3, 8-12, 16, 21-25, 29, 34-38, 46, and 48-51 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed May 5, 2008), the Answer (mailed April 28, 2009), and the Reply Brief (filed June 29, 2009) for the respective details. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See 37 C.F.R. § 41.37(c)(1)(vii).*

### *Appellants' Invention*

Appellants' invention relates to an electronic program schedule system which provides a user with broadcast and cablecast program schedule information. Included in the system is a remote controller having a "HELP" key which is used to retrieve messages which guide a user through the operation of the various operating modes of the electronic television program guide. *See generally Spec. 1:2-9, 21:14-21.*

Claim 1 is illustrative of the claimed invention and reads as follows:

1. A method for providing help information that explains to a user of an electronic television program guide how the electronic television program guide operates, the method comprising:

tracking and storing a current operating mode of the electronic program guide as the user operates the electronic television program guide,

wherein the electronic television program guide has a plurality of operating modes;

receiving a user input; and

providing help information that explains to the user how the electronic television program guide operates in response to receiving the user input, wherein the help information provided is based on the stored current operating mode.

#### *The Examiner's Rejections*

The Examiner's Answer cites the following prior art references:

Young	US 4,706,121	Nov. 10, 1987
Richards	US 5,179,654	Jan. 12, 1993
Palmer	US 6,320,588 B1	Nov. 20, 2001 (filed Apr. 18, 1997)

Claims 1, 4, 5, 13, 14, 17, 18, 26, 27, 30, 31, 39, 40, 42, 43, 47, and 52-59 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of Richards.

Claims 2, 6, 7, 15, 19, 20, 28, 32, 33, 41, 44, and 45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Young in view of Richards and Palmer.

#### ANALYSIS

##### *Claims 1, 4, 5, 13, 14, 17, 18, 26, 27, 30, 31, 39, 40, 42, 43, 47, and 52-59*

Appellants' arguments with respect to the obviousness rejection of representative independent claim 1 focus on the contention that Young does not disclose the tracking and storing of the various operating modes of an electronic program guide and the providing of help information based on the

operating mode.<sup>1</sup> According to Appellants (App. Br. 4; Reply Br. 3-6), when a user in Young accesses the Program Guide (PG) mode, help information is displayed on the display screen which explains the various PG sub-modes (col. 9, ll. 50-55; col. 12, ll. 20-35). In Appellants' view, however, this explanatory sub-mode information remains the same and is displayed whenever Young's user presses the PG key 224 and, therefore, is not based on a tracked operating mode as claimed.

We do not agree with Appellants. We find that, while Appellants correctly characterize Young's described user access and operation of the PG mode of the program guide, Appellants' arguments ignore Young's detailed description of the access and operation of the various PG sub-modes. As described by Young, the various PG operating sub-modes are accessed by selecting the various sub-mode keys 230, 240, 242, and 244 ("C," "P," "A," and "+") on the remote keyboard 220 (Fig. 5; col. 12, l. 45– col. 15, l. 68).

It is apparent from Young's description that the system tracks the user's current selection of each sub-mode and provides and displays guidance information as to what information should be entered by the user for each sub-mode. Pertinent examples of such displayed guidance information for the sub-modes are the Prime Time Setup (P sub-mode) information (col. 14, ll. 1-8) and the Channel Restriction List Setup (C sub-mode) information (col. 14, ll. 45-54).

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<sup>1</sup> Appellants argue rejected claims 1, 4, 5, 13, 14, 17, 18, 26, 27, 30, 31, 39, 40, 42, 43, 47, and 52-59 together as a group. *See* App. Br. 4-9. Accordingly, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Further, with the above discussion of Young in mind, while we find no error in the Examiner's application (Ans. 5) of the *current* operating mode tracking teachings of Richards to Young, we find that the Richards reference is not necessary for a proper obviousness rejection. It is our view that, to whatever extent the Examiner may have relied on Richards for a teaching of tracking the *current* operating mode of operation of a program menu, any such teachings are cumulative to what already exists in Young. Further, although the inclusion of Richards is not necessary for a proper obviousness rejection, we find that Richard supplements the teachings of Young to buttress the Examiner's conclusion that the claims are obvious over the combination of those references. Therefore, it is our view that the combination of Young and Richards renders the cited claims unpatentable.

For the above reasons, the Examiner's 35 U.S.C. § 103(a) rejection of representative independent claim 1, as well as claims 4, 5, 13, 14, 17, 18, 26, 27, 30, 31, 39, 40, 42, 43, 47, and 52-59 not separately argued by Appellants, is sustained.

*Claims 2, 6, 7, 15, 19, 20, 28, 32, 33, 41, 44, and 45*

We also sustain the Examiner's obviousness rejection of claims 2, 6, 7, 15, 19, 20, 28, 32, 33, 41, 44, and 45 in which the Examiner has applied the Palmer reference to the combination of Young and Richards to address the "help icon" and instructional audio and video features of the rejected claims. Appellants (App. Br. 9; Reply Br. 7) have made no separate arguments for the patentability of the rejected claims but, rather, have relied on those made against the rejection of representative claim 1, which arguments we found unpersuasive as previously discussed.

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## CONCLUSION OF LAW

Based on the analysis above, we conclude that the Examiner did not err in rejecting claims 1, 2, 4-7, 13-15, 17-20, 26-28, 30-33, 39-45, 47, and 52-59 for obviousness under 35 U.S.C. § 103(a).

## DECISION

We affirm the Examiner's decision rejecting claims 1, 2, 4-7, 13-15, 17-20, 26-28, 30-33, 39-45, 47, and 52-59 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v) (2009).

AFFIRMED

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